D.B.INCOME TAX APPEAL NO.36/04
(COMMISSIONER OF INCOME TAX-II,JODHPUR VS. K.C.GOKHANI)

D.B.INCOME TAX APPEAL NO. 37/04
(COMMISSIONER OF INCOME TAX-II,JODHPUR VS. K.C.GOKHANI)

DATE :- 25.1.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. CHATRA RAM JAT,J.

Mr. Sangeet Lodha, for the appellant.
Mr. Anjay Kothari, for the respondent.

Heard learned counsel for the parties.

These two appeals have arisen out of the same order passed by the Tribunal dated 7.5.2003.

The assessee who is an employee of the Life Insurance Corporation of India was in receipt of the conveyance allowance and additional conveyance allowance from its employer. These appeals relate to assessment year 1992-93 and 1993-94 respectively. The assessee has claimed that the additional conveyance allowance received by him from his employer was not includible in his income u/s 10 (14) of the Income Tax Act, 1961. The claim of the assessee to exemption of the said allowance from income tax was rejected inter alia on the ground that assessee has not filed any proof or evidence that conveyance allowance was

wholly and exclusively spent for the purpose of his employment.

The CIT (Appeals) had accepted that additional conveyance allowance to the extent of Rs. 33030/- only was exempted. On appeal, the Tribunal had held that the additional conveyance allowance is paid by the LIC towards reimbursement of the actual expenses incurred by the Development Office on account of conveyance in relation to performance of their duties. The certificate for that effect has been given by the LIC, therefore, the deduction of conveyance allowance and additional conveyance allowance was allowed to assessee subject to verification of utilisation of the said allowances by the appellant for the two assessment years.

In coming the aforesaid conclusion , the Tribunal has also noticed that in the earlier assessment year the CIT (Appeals) had himself restored the directions for fresh adjudication before the assessing officer by giving an opportunity to the assessee to prove utilisation of the additional conveyance allowance received by him for the purpose of his employment.

This court in D.B.Income Tax Reference No. 57/95 CIT Vs. P.N.Verma decided on 10.4.2006, has occasion to consider the like question raised in relation to the assessment year 1984-85 in the case of the respondent Development Officer of LIC. The court found that allowing or disallowing of additional conveyance allowance received by the assessee from the employer was not dependent on any interpretation of the statute so as to give rise to any question of law, but was dependent on the finding of fact about the actual utilization of additional conveyance allowance received by the assessee wholly, necessarily and exclusively for the purpose of discharging his official duties. The finding which is required to be reached on the basis of evidence and is a finding of fact and does not give rise to any question of law.

Since in the present case the CIT (Appeals) in the case of same assessee for assessment year 1991-92, remitted the issue back to the Assessing Officer for this enquiry, the Tribunal for the two subsequent years also allowed the exemption under Section 10 (14) of the Income Tax Act, 1961 on furnishing of proof for the utilisation of the amount for performance of the duties of the office.

In these circumstances no question of law arises for consideration in this appeal. In view of the aforesaid decision no interference is called for in this appeal also where the tribunal has merely given direction to the Assessing Officer that the additional conveyance allowance is not to be included in the total income on furnishing the certificate of the utilisation.

Accordingly these appeals fail and are hereby dismissed.

(CHATRA RAM JAT),J. **(RAJESH BALIA),J.**

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